The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BIOMEDINO, LLC, Plaintiff, v. WATERS TECHNOLOGIES CORPORATION, GENERAL ELECTRIC COMPANY d/b/a GE HEALTHCARE, AGILENT TECHNOLOGIES, INCORPORATED, Defendants.	NO.: CV05-0042L **UNOPPOSED MOTION FOR ENTRY OF JUDGMENT UNDER RULE 54(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE** **Note for consideration on:** **March 15, 2006**
AND RELATED COUNTERCLAIMS.	

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I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 54(b), Plaintiff Biomedino, LLC, and Co-Defendants Waters Technologies Corp., General Electric Company, and Agilent Technologies, Inc. ("the Parties"), jointly request that the Court enter final judgment of invalidity of claims 13-17 and 40 of U.S. Patent No. 6,602,502 ("the Patent-in-Suit") under 35 U.S.C. § 112, ¶ 2. Under Rule 54, entry of judgment is appropriate because the Court's ORDER CONSTRUING CLAIMS OF THE '502 PATENT, filed November 22, 2005, ("ORDER") ultimately disposes of Biomedino's claims of patent infringement against all Defendants. This motion is unopposed and there is no just reason for delay.

II. PROCEDURAL BACKGROUND

The plaintiff, Biomedino, LLC ("Biomedino"), sued the Defendants for infringement of U.S. Patent No. 6,602,502. Following the Markman hearing, on November 22, 2005, the Court's claim construction ORDER found claims 13-17 and 40 to be indefinite under 35 U.S.C. § 112, ¶ 2 and, therefore, invalid. Specifically, the Court found that the claim term "control means," appearing in all of the claims-at-issue, is subject to 35 U.S.C. § 112, ¶ 6 and that the specification fails to adequately disclose a structure corresponding to the "control means" as required by the statute.

III. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 54(b) ("Rule 54(b)"), when more than one claim for relief is presented in an action, the court may direct the entry of final judgment as to one or more but fewer than all of the claims "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." FRCP 54(b).

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A. The Court's Order is a Final Judgment.

The Court's ORDER finding the claims-at-issue invalid is a judgment dispositive of the case because it ultimately disposes of Biomedino's claims of patent infringement against all the Defendants. *See, e.g., Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 7 (citing *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427 (1956)) (judgment is final if ultimately disposes cognizable claim); *see also, e.g., Trilogy Communications, Inc. v. Times Fiber Communications, Inc.*, 109 F.3d 739 (Fed. Cir. 1997) (Federal Circuit jurisdiction reviews District Court's claim construction and non-infringement judgment after certified judgment under Rule 54(b)).

B. No Just Reason for Delay of Entry of Judgment Exists.

To determine whether just reason exists to delay entry of final judgment, both judicial administrative interests and the equities of the present case are considered. *Curtis-Wright Corp.* 446 U.S. at 8. The present motion is unopposed and the disposition of all of the claims at issue under § 112 on the basis of the lack of definition of the "control means" limitation in the claims is readily separable from the other issues that may remain to be adjudicated. As such, the Federal Circuit would not be forced to decide any issue more than once, even in a subsequent appeal.

Either of a ruling of invalidity or a ruling of non-infringement support entry of judgment under Rule 54(b). The Federal Circuit has stated:

> Once the district court decided that Gore's patent was invalid or that IMPRA did not infringe Gore's patent, the district court no longer needed to address any of the other defenses. The law is clear that a "defendant need only sustain one decisive defense, not all of them." *Baumstimler v. Rankin*, 677 F.2d 1061, 1070, 215 USPQ. 575, 582 (5th Cir. 1982). Because the infringement claim and several dispositive defenses were ruled upon, the district court's judgment was final.

W.L. Gore & Associates, Inc. v. Int'l Medical Prosthetics Research Associates, Inc., 975 F.2d 858, 863 (Fed. Cir. 1992).

Thus, all the pertinent considerations weigh in favor of entering a final judgment of invalidity in favor of the Defendants.

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IV. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court enter the attached judgment in favor of Defendants Waters Technologies Corp., General Electric Company, and Agilent Technologies, Inc. that claims 13-17 and 40 of U.S. Patent No. 6,602,502 are invalid as indefinite under 35 U.S.C. § 112, ¶ 2.

Dated: March 14, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on **March 15, 2006**, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to the following individuals:

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